

2SHB 1789 - H AMD 103

By Representative Klippert

FAILED 03/07/2011

1 On page 29, after line 11, insert the following:

2

3 "Sec. 11. RCW 46.20.308 and 2008 c 282 s 2 are each amended to
4 read as follows:

5 (1) Any person who operates a motor vehicle within this state is
6 deemed to have given consent, subject to the provisions of RCW
7 46.61.506, to a test or tests of his or her breath or blood for the
8 purpose of determining the alcohol concentration ((~~or~~)) and presence
9 of any other drug in his or her breath or blood if arrested for any
10 offense where, at the time of the arrest, the arresting officer has
11 reasonable grounds to believe the person had been driving or was in
12 actual physical control of a motor vehicle while under the influence
13 of intoxicating liquor or any drug or was in violation of RCW
14 46.61.503. Neither consent nor this section precludes a police
15 officer from obtaining a search warrant for a person's breath or
16 blood.

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control
20 of a motor vehicle within this state while under the influence of
21 intoxicating liquor or any drug or the person to have been driving or
22 in actual physical control of a motor vehicle while having alcohol in
23 a concentration in violation of RCW 46.61.503 in his or her system and
24 being under the age of twenty-one. However, in those instances where
25 the person is incapable due to physical injury, physical incapacity,
26 or other physical limitation, of providing a breath sample or where
27 the person is being treated in a hospital, clinic, doctor's office,

1 emergency medical vehicle, ambulance, or other similar facility or
2 where the officer has reasonable grounds to believe that the person is
3 under the influence of a drug, a blood test shall be administered by a
4 qualified person as provided in RCW 46.61.506(5) for the purpose of
5 determining the alcohol concentration and presence of other drugs in
6 the person's blood. The officer shall inform the person of his or her
7 right to refuse the breath or blood test, and of his or her right to
8 have additional tests administered by any qualified person of his or
9 her choosing as provided in RCW 46.61.506. The officer shall warn the
10 driver, in substantially the following language, that:

11 (a) If the driver refuses to take the test, the driver's license,
12 permit, or privilege to drive will be revoked or denied for at least
13 one year; and

14 (b) If the driver refuses to take the test, the driver's refusal
15 to take the test may be used in a criminal trial; and

16 (c) If the driver submits to the test and the test is
17 administered, the driver's license, permit, or privilege to drive will
18 be suspended, revoked, or denied for at least ninety days if the
19 driver is age twenty-one or over and the test indicates the alcohol
20 concentration of the driver's breath or blood is 0.08 or more, or if
21 the driver is under age twenty-one and the test indicates the alcohol
22 concentration of the driver's breath or blood is 0.02 or more, or if
23 the driver is under age twenty-one and the driver is in violation of
24 RCW 46.61.502 or 46.61.504; and

25 (d) If the driver's license, permit, or privilege to drive is
26 suspended, revoked, or denied the driver may be eligible to
27 immediately apply for an ignition interlock driver's license.

28 (3) Except as provided in this section, the test administered
29 shall be of the breath only. If an individual is unconscious or is
30 under arrest for the crime of vehicular homicide as provided in RCW
31 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an
32 individual is under arrest for the crime of driving while under the
33 influence of intoxicating liquor or drugs as provided in RCW
34 46.61.502, which arrest results from an accident in which there has

1 been serious bodily injury to another person, a breath or blood test
2 may be administered without the consent of the individual so arrested.
3 If a blood test is administered, the blood must be tested for both
4 alcohol concentration and the presence of other drugs.

5 (4) Any person who is dead, unconscious, or who is otherwise in a
6 condition rendering him or her incapable of refusal, shall be deemed
7 not to have withdrawn the consent provided by subsection (1) of this
8 section and the test or tests may be administered, subject to the
9 provisions of RCW 46.61.506, and the person shall be deemed to have
10 received the warnings required under subsection (2) of this section.
11 If a blood test is administered, the blood must be tested for both
12 alcohol concentration and the presence of other drugs.

13 (5) If, following his or her arrest and receipt of warnings under
14 subsection (2) of this section, the person arrested refuses upon the
15 request of a law enforcement officer to submit to a test or tests of
16 his or her breath or blood, no test shall be given except as
17 authorized under subsection (3) or (4) of this section.

18 (6) If, after arrest and after the other applicable conditions and
19 requirements of this section have been satisfied, a test or tests of
20 the person's blood or breath is administered and the test results
21 indicate that the alcohol concentration of the person's breath or
22 blood is 0.08 or more if the person is age twenty-one or over, or 0.02
23 or more if the person is under the age of twenty-one, or the person
24 refuses to submit to a test, the arresting officer or other law
25 enforcement officer at whose direction any test has been given, or the
26 department, where applicable, if the arrest results in a test of the
27 person's blood, shall:

28 (a) Serve notice in writing on the person on behalf of the
29 department of its intention to suspend, revoke, or deny the person's
30 license, permit, or privilege to drive as required by subsection (7)
31 of this section;

32 (b) Serve notice in writing on the person on behalf of the
33 department of his or her right to a hearing, specifying the steps he
34 or she must take to obtain a hearing as provided by subsection (8) of

1 this section and that the person waives the right to a hearing if he
2 or she receives an ignition interlock driver's license;

3 (c) Mark the person's Washington state driver's license or permit
4 to drive, if any, in a manner authorized by the department;

5 (d) Serve notice in writing that the marked license or permit, if
6 any, is a temporary license that is valid for sixty days from the date
7 of arrest or from the date notice has been given in the event notice
8 is given by the department following a blood test, or until the
9 suspension, revocation, or denial of the person's license, permit, or
10 privilege to drive is sustained at a hearing pursuant to subsection
11 (8) of this section, whichever occurs first. No temporary license is
12 valid to any greater degree than the license or permit that it
13 replaces; and

14 (e) Immediately notify the department of the arrest and transmit
15 to the department within seventy-two hours, except as delayed as the
16 result of a blood test, a sworn report or report under a declaration
17 authorized by RCW 9A.72.085 that states:

18 (i) That the officer had reasonable grounds to believe the
19 arrested person had been driving or was in actual physical control of
20 a motor vehicle within this state while under the influence of
21 intoxicating liquor or drugs, or both, or was under the age of twenty-
22 one years and had been driving or was in actual physical control of a
23 motor vehicle while having an alcohol concentration in violation of
24 RCW 46.61.503;

25 (ii) That after receipt of the warnings required by subsection (2)
26 of this section the person refused to submit to a test of his or her
27 blood or breath, or a test was administered and the results indicated
28 that the alcohol concentration of the person's breath or blood was
29 0.08 or more if the person is age twenty-one or over, or was 0.02 or
30 more if the person is under the age of twenty-one; and

31 (iii) Any other information that the director may require by rule.

32 (7) The department of licensing, upon the receipt of a sworn
33 report or report under a declaration authorized by RCW 9A.72.085 under
34 subsection (6)(e) of this section, shall suspend, revoke, or deny the

1 person's license, permit, or privilege to drive or any nonresident
2 operating privilege, as provided in RCW 46.20.3101, such suspension,
3 revocation, or denial to be effective beginning sixty days from the
4 date of arrest or from the date notice has been given in the event
5 notice is given by the department following a blood test, or when
6 sustained at a hearing pursuant to subsection (8) of this section,
7 whichever occurs first.

8 (8) A person receiving notification under subsection (6)(b) of
9 this section may, within twenty days after the notice has been given,
10 request in writing a formal hearing before the department. The person
11 shall pay a fee of two hundred dollars as part of the request. If the
12 request is mailed, it must be postmarked within twenty days after
13 receipt of the notification. Upon timely receipt of such a request
14 for a formal hearing, including receipt of the required two hundred
15 dollar fee, the department shall afford the person an opportunity for
16 a hearing. The department may waive the required two hundred dollar
17 fee if the person is an indigent as defined in RCW 10.101.010. Except
18 as otherwise provided in this section, the hearing is subject to and
19 shall be scheduled and conducted in accordance with RCW 46.20.329 and
20 46.20.332. The hearing shall be conducted in the county of the
21 arrest, except that all or part of the hearing may, at the discretion
22 of the department, be conducted by telephone or other electronic
23 means. The hearing shall be held within sixty days following the
24 arrest or following the date notice has been given in the event notice
25 is given by the department following a blood test, unless otherwise
26 agreed to by the department and the person, in which case the action
27 by the department shall be stayed, and any valid temporary license
28 marked under subsection (6)(c) of this section extended, if the person
29 is otherwise eligible for licensing. For the purposes of this
30 section, the scope of the hearing shall cover the issues of whether a
31 law enforcement officer had reasonable grounds to believe the person
32 had been driving or was in actual physical control of a motor vehicle
33 within this state while under the influence of intoxicating liquor or
34 any drug or had been driving or was in actual physical control of a

1 motor vehicle within this state while having alcohol in his or her
2 system in a concentration of 0.02 or more if the person was under the
3 age of twenty-one, whether the person was placed under arrest, and (a)
4 whether the person refused to submit to the test or tests upon request
5 of the officer after having been informed that such refusal would
6 result in the revocation of the person's license, permit, or privilege
7 to drive, or (b) if a test or tests were administered, whether the
8 applicable requirements of this section were satisfied before the
9 administration of the test or tests, whether the person submitted to
10 the test or tests, or whether a test was administered without express
11 consent as permitted under this section, and whether the test or tests
12 indicated that the alcohol concentration of the person's breath or
13 blood was 0.08 or more if the person was age twenty-one or over at the
14 time of the arrest, or 0.02 or more if the person was under the age of
15 twenty-one at the time of the arrest. The sworn report or report
16 under a declaration authorized by RCW 9A.72.085 submitted by a law
17 enforcement officer is prima facie evidence that the officer had
18 reasonable grounds to believe the person had been driving or was in
19 actual physical control of a motor vehicle within this state while
20 under the influence of intoxicating liquor or drugs, or both, or the
21 person had been driving or was in actual physical control of a motor
22 vehicle within this state while having alcohol in his or her system in
23 a concentration of 0.02 or more and was under the age of twenty-one
24 and that the officer complied with the requirements of this section.

25 A hearing officer shall conduct the hearing, may issue subpoenas
26 for the attendance of witnesses and the production of documents, and
27 shall administer oaths to witnesses. The hearing officer shall not
28 issue a subpoena for the attendance of a witness at the request of the
29 person unless the request is accompanied by the fee required by RCW
30 5.56.010 for a witness in district court. The sworn report or report
31 under a declaration authorized by RCW 9A.72.085 of the law enforcement
32 officer and any other evidence accompanying the report shall be
33 admissible without further evidentiary foundation and the
34 certifications authorized by the criminal rules for courts of limited

1 jurisdiction shall be admissible without further evidentiary
2 foundation. The person may be represented by counsel, may question
3 witnesses, may present evidence, and may testify. The department
4 shall order that the suspension, revocation, or denial either be
5 rescinded or sustained.

6 (9) If the suspension, revocation, or denial is sustained after
7 such a hearing, the person whose license, privilege, or permit is
8 suspended, revoked, or denied has the right to file a petition in the
9 superior court of the county of arrest to review the final order of
10 revocation by the department in the same manner as an appeal from a
11 decision of a court of limited jurisdiction. Notice of appeal must be
12 filed within thirty days after the date the final order is served or
13 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
14 1.1, or other statutes or rules referencing de novo review, the appeal
15 shall be limited to a review of the record of the administrative
16 hearing. The appellant must pay the costs associated with obtaining
17 the record of the hearing before the hearing officer. The filing of
18 the appeal does not stay the effective date of the suspension,
19 revocation, or denial. A petition filed under this subsection must
20 include the petitioner's grounds for requesting review. Upon granting
21 petitioner's request for review, the court shall review the
22 department's final order of suspension, revocation, or denial as
23 expeditiously as possible. The review must be limited to a
24 determination of whether the department has committed any errors of
25 law. The superior court shall accept those factual determinations
26 supported by substantial evidence in the record: (a) That were
27 expressly made by the department; or (b) that may reasonably be
28 inferred from the final order of the department. The superior court
29 may reverse, affirm, or modify the decision of the department or
30 remand the case back to the department for further proceedings. The
31 decision of the superior court must be in writing and filed in the
32 clerk's office with the other papers in the case. The court shall
33 state the reasons for the decision. If judicial relief is sought for
34 a stay or other temporary remedy from the department's action, the

1 court shall not grant such relief unless the court finds that the
2 appellant is likely to prevail in the appeal and that without a stay
3 the appellant will suffer irreparable injury. If the court stays the
4 suspension, revocation, or denial it may impose conditions on such
5 stay.

6 (10)(a) If a person whose driver's license, permit, or privilege
7 to drive has been or will be suspended, revoked, or denied under
8 subsection (7) of this section, other than as a result of a breath or
9 blood test refusal, and who has not committed an offense for which he
10 or she was granted a deferred prosecution under chapter 10.05 RCW,
11 petitions a court for a deferred prosecution on criminal charges
12 arising out of the arrest for which action has been or will be taken
13 under subsection (7) of this section, or notifies the department of
14 licensing of the intent to seek such a deferred prosecution, then the
15 license suspension or revocation shall be stayed pending entry of the
16 deferred prosecution. The stay shall not be longer than one hundred
17 fifty days after the date charges are filed, or two years after the
18 date of the arrest, whichever time period is shorter. If the court
19 stays the suspension, revocation, or denial, it may impose conditions
20 on such stay. If the person is otherwise eligible for licensing, the
21 department shall issue a temporary license, or extend any valid
22 temporary license marked under subsection (6) of this section, for the
23 period of the stay. If a deferred prosecution treatment plan is not
24 recommended in the report made under RCW 10.05.050, or if treatment is
25 rejected by the court, or if the person declines to accept an offered
26 treatment plan, or if the person violates any condition imposed by the
27 court, then the court shall immediately direct the department to
28 cancel the stay and any temporary marked license or extension of a
29 temporary license issued under this subsection.

30 (b) A suspension, revocation, or denial imposed under this
31 section, other than as a result of a breath or blood test refusal,
32 shall be stayed if the person is accepted for deferred prosecution as
33 provided in chapter 10.05 RCW for the incident upon which the
34 suspension, revocation, or denial is based. If the deferred

1 prosecution is terminated, the stay shall be lifted and the
2 suspension, revocation, or denial reinstated. If the deferred
3 prosecution is completed, the stay shall be lifted and the suspension,
4 revocation, or denial canceled.

5 (c) The provisions of (b) of this subsection relating to a stay of
6 a suspension, revocation, or denial and the cancellation of any
7 suspension, revocation, or denial do not apply to the suspension,
8 revocation, denial, or disqualification of a person's commercial
9 driver's license or privilege to operate a commercial motor vehicle.

10 (11) When it has been finally determined under the procedures of
11 this section that a nonresident's privilege to operate a motor vehicle
12 in this state has been suspended, revoked, or denied, the department
13 shall give information in writing of the action taken to the motor
14 vehicle administrator of the state of the person's residence and of
15 any state in which he or she has a license."

16

17 Correct the title.

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EFFECT: Explicitly provides that if a driver is subject to a
blood test under the implied consent statute, the blood must be
tested for both alcohol and drugs.

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